



THE CITY OF SAN DIEGO
CITIZENS' EQUAL OPPORTUNITY COMMISSION
REGULAR BUSINESS MEETING

**CD of Recorded Minutes available upon request*

MINUTES

Wednesday, November 3, 2010

6 P.M.

**City Administration Building
Council Committee Room
202 C Street – 12th Floor
San Diego, CA 92101**

Commissioners Present:

Shirley Weber (Chairperson)
Mike Olivier
Maurice Wilson

Ron Cho
Stampp Corbin (Vice Chair)
Jon Cloud

Absent Commissioners: Juan Gallegos, Brad Barnum, Eileen Chaske

MAYOR'S STAFF:

Debra Fischle-Faulk, Administration Department Director
Hildred Pepper, Purchasing & Contracting Department Director
Lynn Sharpe-Underwood, Executive Director, Commission on Gang Prevention and Intervention
Maurcell Gresham, Procurement & Contract Compliance Manager for the San Diego Housing Commission
Henry Foster, Program Manager, Equal Opportunity Contracting Program
Laura Davis, Word Process Operator, Equal Opportunity Contracting Program

- I. CALL TO ORDER:** The meeting was called to order at 6:08 p.m. by Chairperson Shirley Weber.
- II. APPROVAL OF MINUTES AND AGENDA:** Agenda was unanimously approved. Minutes from October 13, 2010 unanimously approved.
- III. PUBLIC COMMENT:** NONE
- IV. STAFF REPORT: Debra Fischle-Faulk – Director's**
 - *Presentation from the Gang Commission / Housing Commission – Employment Training. Presented by: Maurcell Gresham and Lynn Sharpe-Underwood*
 - *Introduction of the Equal Opportunity Contracting Programs' Program Manager: Henry Foster III.*

- ***There was extensive discussion regarding the data presented by Purchasing & Contracting on FY10 Goods & Services awards. The information regarding business owner status was based on self identification on the Vendor Registration Forms by the business owner. There were several concerns regarding the data's accuracy and meaning, as well as, significant discussion regarding the status of the Vendor Registration Form.***
- ***Update on the Prism System- The System is pending the FY2011 Contract Data in order to go live and Presentation was promises by Early Morning Software of the System will happen in the December meeting.***

V. ACTION ITEMS:

- ***Equal Benefits Ordinance*** – Chair Shirley Weber attended the City Council meeting and presented the Commissions' support of the Equal Benefits Ordinance. It requires a second reading before it is adopted.
- ***Preparation of the Annual Report Draft Version***
 - Administration Department Director provided the Commission with a list of their activities/letters/accomplishments over the past year and a copy of the last annual report submitted.
 - There was extensive discussion regarding what information would be included in the Annual Report and who would produce the Draft version of the Report.
 - It was suggested that Vice-Chair Stampp Corbin, begin preparing a Draft Version of the Annual Report. Ultimately Chair Weber agreed to prepare the first draft. Chair Weber requested the FY10 statistical data from Director Fischle-Faulk.
 - The next Commission meeting will be dedicated to reviewing the draft with a goal of finalizing the report by January 2011
 - Commissioners reminded one another of the Brown Act in terms of sharing the Draft Version of the Annual Report amongst the Commissioners

VI. DISCUSSION ITEMS: NONE

VII. SUBCOMMITTEE REPORT: NONE

VIII. COMMISSIONERS ANNOUNCEMENTS: NONE

IX. CHAIR'S REPORT: NONE

X. ADJOURMENT: 7:35 P.M

*****Materials Provided**

- I. Agenda
- II. Minutes of October 13, 2010
- III. Staff Report
- IV. Handouts
 - New Direction – The City of San Diego Commission on Gang Prevention and Intervention Strategic Action Plan 2011-2012
 - Listening Tour - The City of San Diego Commission on Gang Prevention and Intervention

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- CEOC Activities Report 2009-10/2010
- Report to Council NO. 09-121
- Correspondence from the Commission
- Purchasing & Contracting Department FY Purchase Order Report excluding Agencies as self Identified.

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CEOC Activities
12/2009 – 10/2010

September, 2009

- ▶ Voted (Yea-6, Nay-0, recused-2) to approve draft letter to Mayor and City Council regarding AGC's lawsuit
- ▶ Voted for a special meeting to review, discuss and take a position on the proposed SLBE Program

October, 2009

- ▶ Sent letter of concern to Mayor and City Council regarding AGC's lawsuit

November, 2009

▶ **Commissioner Weber:**

Attended Rules Committee. Staffing level comments were voice at the meeting due to the City's current budget issues. Adequate staff is necessary to implement the proposed program. Committee members were assured them that there were opportunities to accrue staff.

Requested an update on a regular basis regarding staffing levels.

- ▶ **Commissioner Weber:** Announce that she attended the Rules Committee and a request was made by the Committee that the Commission be provided a list of potential Contractors. She committed to ensuring the list is provided to the Council.

December, 2009

- ▶ Staff report from Purchasing & Contracting Department (P&C) – raised concerns:
 - Discretion of P&C Agent
 - Sharing information
 - Verbal quotes being accepted
 - Diversity within P&C
 - Outreach to minority businesses
 - Confidence in doing business with the City
 - Meet with other Businesses and requesting/sharing vendor data
 - Broaden small business information outside of construction services
- ▶ Received statistical report from the Civil Service Commission (composition of City employees)
 - Requested meeting with Personnel Department to discuss report

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January, 2010

► Presentation: EEO Annual Report 2007-2008 Presentation by Personnel Department- Glenn Encarnacion- Deputy Personnel Director and Harold Barclay Equal Employment Investigation Manager: (Handouts Provided)

► Action Item: Request from City Attorney a short legal memo explaining why we don't keep employment data on employing people with Disabilities.

► Requested Action: We would like to see a list of all of the contractors that bid the project? We have asked before and have not received...and are the subcontractors listed that bid the project *as well?*

February, 2010

► Action Item: Request from City Attorney a short legal memo explaining why we don't keep employment data on employing people with Disabilities.

► Motion: To move forward in hosting an SLBE Certification Workshop.

Vote: Unanimously passed to move forward in hosting a Certification Workshop.

March, 2010

► IBA Presentation – Jeff Sturak (*handouts provided*)

• Jeff Sturak presented the IBAs report to the Rules Committee regarding Councilmember Emerald's Green Jobs in Public Works Proposal

► Construction Apprenticeship Programs Presentation - Corrine Wilson, Research and Policy Analyst with the Center on Policy Initiatives
(*Handouts provided*)

► Commission representative to Human Relations Commission Meeting on March 17th, the 3rd Wednesday of the Month at the Balboa Park Club.

Motion to attend the Human Relations Commission Meeting was passed that either Dr. Weber attend, or that Mr. Salas, if she is not available. Vote was unanimous.

June, 2010

► **ATTORNEY'S REPORT: Sanna Singer, Deputy City Attorney**

a. Local Hiring Preference Program considered by Rules Committee and forwarded to Council for review by Council on 6/28/2010.

Option 1: Address local hiring through Project Labor Agreements (PLA). (Currently being used by Los Angeles)

Option 2: Enact an Ordinance imposing local hiring requirements on all Public Works projects within a certain dollar amount and if an Ordinance is put forward by Council and brought before an advisory committee and that the contractor must hire a professional hiring firm.

Option 3: Enact an Ordinance imposing mandatory hiring goal.

► *Motion made and vote taken of those who disagree with the SCOPe/DVBE issue.

4 - In Favor

2 - Abstained

*Motion made and vote taken in favor of the Disparity Study.

4 - In Favor

2 - Opposed

*Motion made and requests the following to occur in regards to the Local Hiring Preference:

1. A letter to be written to Council President Hueso and to address issues.

2. Further discussion and dialogue is proposed to better understand all issues.

3. The Commission understands the good intentions of the program but would like to discuss the implications and adverse affects it could have on current programs.

4. Chair Shirley Weber to draft the letter of concern and forward to Debra Fischle-Faulk.

Action: Chair Shirley Weber to draft the letter to Councilmember DeMaio inviting him to one of the regularly scheduled meeting in July to examine his initiative.

► *Motion was made and vote was taken to oppose the Green Initiative program.

In favor - 4

Opposed - 0

Abstained - 2

► Carl DeMaio was invited (as requested) and the soonest he could make it would be August at our regular scheduled meeting.

July, 2010

► SCOPe Audit Report (Audit Committee Agenda 6/14/10) – Commissioner Corbin reported his attendance at the Audit Committee Meeting of June 14, 2010 where he presented the Commission's position of the City moving forward with a Disparity Study. The Audit Committee voted to move the item to the report to the full City Council for action.

► For Commission Chair Shirley Weber to represent the Commission at the July 12, 2010 City Council meeting and the Commission's issues/position on the Local Hiring Program Ordinance. The Commission has concerns regarding the necessity of the ordinance, how enforcement would be implemented, how monitoring might be achieved and the impact on staff. (Letter Attached)

August, 2010

► PRESENTATION: Proposed Equal Benefits Ordinance by Pam Ison
Pam Ison, District 3 Council Representative presented Councilmember Todd Gloria's proposed Equal Benefits Ordinance.

► The Commissioners position on the Local Hiring Program Ordinance was prepared by and signed by Chair Weber and forwarded to City Council.

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September, 2010

► The proposed Equal Benefits Ordinance was discussed in detail. After significant discussion, a Motion was made and the Commission voted to support the Ordinance by a vote of 4 in support of /0 against support of and 1 abstention



ATTACHMENT 4

THE CITY OF SAN DIEGO

DATE ISSUED: August 26, 2009 REPORT NO. 09-121
ATTENTION: Honorable Mayor, City Council and The Committee on Rules, Open Government and Intergovernmental Relations of the City Council
SUBJECT: Citizens' Equal Opportunity Commission 2009 Spring Quarterly Report
REFERENCE: Municipal Code Chapter II, Article 6, Division 0, Section 26.16; Section 43 of the City Charter-amended 11-4-1969. Amended by Ordinance 19255 on 1/26/04.

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE CITY COUNCIL.

BACKGROUND

The Citizens' Equal Opportunity Commission (CEOC) was established, pursuant to the authority of Municipal Code section 26.16 enacted on November 12, 1975, as an advisory commission to the Mayor and City Council. The duties of the commission include monitoring and/or evaluating the Equal Opportunity Program of the City; advising on a continuing basis the Mayor, City Council, City Manager, Civil Service Commission and other appropriate agencies of City government; submitting written quarterly reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules, Open Government and Intergovernmental Relations Committee ("the Rules Committee") and, upon acceptance, for submission to the full City Council. Other duties of the commission include assisting the City in recruitment of competent minorities, women and the disabled and promoting the City of San Diego as an Equal Opportunity Employer and as a provider of equal opportunity to individuals and firms desiring to contract with the City. Commissioners are appointed by the Mayor and confirmed by the City Council. They serve two-year terms, without compensation. There are eleven commissioners, four of whom are at-large commissioners, and seven of whom represent the following constituencies: Latino, African-American, Asian/Pacific Islander, Native American, Filipino, Disabled and Lesbian/Gay/Bisexual/Transgender.

The CEOC meets regularly at 6:00 p.m., on the first Wednesday of each month in the 12th Floor meeting room of the City Administration Building located at 202 C Street, San Diego. The



Citizen's Equal Opportunity Commission

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meetings are publicly noticed and open to the public. In addition, beginning in 2004, the CEOC has held a monthly priority setting meeting, also open to the public and publicly noticed, at 8 a.m., on a weekday during the week following the regularly-scheduled Wednesday evening meeting.

OVERVIEW

The City's programs which have as their stated goals the achievement of equal opportunity can be generally broken down into two components, employment and public contracting. The public contracting aspect of the City's programs involves the City's agreements with non-employed individuals and firms who provide services to the City, for example through consulting, the supply of goods and materials, and the construction of public works. There is, therefore, no single "Equal Opportunity Program" on which the CEOC's attention is focused. Instead, as discussed below, the CEOC has monitored a number of different programs whose stated goals are to afford equal opportunity.

A. Employment.

As to the City's program to provide equal opportunity as an employer, the CEOC has not been provided sufficiently current data regarding the City's employed workforce to enable it to provide a current and meaningful evaluation. The CEOC has asked City staff to arrange for its receipt of updated data, and a report from the City relative to these matters is scheduled to be presented to the CEOC at its August, 2009 business meeting.

However, based on information provided to the CEOC by City personnel in the not-too-distant past, one matter relative to City employment is worthy of note here. While the City appears to take seriously its obligation to make its facilities accessible to members of the community with physical disabilities, and while the City has incorporated into its Equal Employment Opportunity Policy its commitment to honor the legal requirements of the federal Americans with Disabilities Act and California's Fair Employment and Housing Act of affording "reasonable accommodations" to applicants and employees, the City's policies do not clearly indicate a commitment to ensure equal employment opportunities to the disabled through its hiring practices. The CEOC suggests the policy of ensuring that citizens with disabilities are given an opportunity to participate in the mainstream of American society by engaging in meaningful employment is one that should be adopted by the City more clearly through the hiring of qualified individuals with disabilities who, with reasonable accommodations contemplated by the law, will be a valuable resource to the City as well as their respective communities.

B. Public Contracting.

The CEOC's role of monitoring the City's programs designed to afford equal opportunity to building contractors who would construct public improvements consumes, as it has historically, most of its attention. Without providing here a long historical account of the City's efforts to afford equal opportunity in public contracting, a current assessment of any progress being made under the City's now-existing programs might fairly begin with Mayor Jerry Sanders' remarks made at the August 1, 2007, meeting of the Rules Committee. On that occasion, the Mayor said

that the City "has done an abysmal job of implementing and maintaining equal opportunity contracting programs", and he pledged to assume personal responsibility "to implement a program that will serve the needs of every community in San Diego."

This report will, therefore, focus on the efforts of the City to implement programs which are designed to afford equal opportunities to those who would contract with the City, paying particular attention to any progress which has been made since August, 2007.

DISCUSSION

The Importance of Prompt and Regular Reporting

Data which reflects who has submitted bids for, and who have been awarded, public construction contracts is the primary indicator of whether any program designed to achieve equal opportunity is successful.

Undoubtedly, one of the reasons Mayor Sanders admitted the City's failures relative to equal opportunity contracting programs is that in or about 2004 the City stopped analyzing and reporting on data relating to the City's construction projects which could have been used to gauge the effectiveness of its Equal Opportunity Contracting Program. Since August 2007, City staff has attempted to reconstruct historical data in order to provide a more recent historical indication of whether the City's programs were effective. That data provides stark evidence that the City did not, during that time period, achieve diversity in public contracting.

For the CEOC to provide a meaningful evaluation of the effectiveness of the City's renewed commitment to equal opportunity in public contracting, it must receive regular data regarding what contracts have been awarded, their dollar amounts, who bid on them, and to whom they were awarded (including specifically the number of bids received from, and awards made to, women/minority/disabled veteran-owned firms). The information must be provided to the CEOC well in advance of when City staff intends to periodically report to the City Council or any of its committees, so that the CEOC can provide the evaluations expected of it, when they are expected.

Since August, 2007, the CEOC has requested that City staff report to it regularly regarding this information. Although staff has provided some of the requested information, as of the date of this report, a meaningful system and format through which this critical information is provided to the CEOC with predictable regularity has not been devised.

Yet, from the data which has been provided, racial and gender diversity among the construction contractors engaged by the City has not been attained and little or no progress in that regard has been achieved.

The Need for a Current Disparity Study

Only two percent of "certified firms" (those owned by women, minorities or disabled veterans) participated in construction contracts awarded by the City under its "race neutral" standards during the July, 2008 through December, 2008 time period.

Representatives of the minority community who have appeared before the CEOC argue that such disappointingly scant participation is a function of the City's continuing "abysmal" implementation of programs designed to encourage a diverse cross-section of City contractors, such as its SCOPE program. On the other hand, representatives of the San Diego Chapter of the Association of General Contractors argue that women, minority or disabled-veteran owned construction firms are not participating in public construction because an insufficient number, if any, of such firms submit bids to be awarded such work. They suggest such firms may not even exist. They call for "an availability study" to be conducted.

It has been over 15 years since the City last commissioned a disparity study to analyze the extent to which minority and/or women owned business enterprises (MBE/WBE) were afforded equal contracting opportunities in the San Diego construction industry and by the City. The conclusion of that report was that discrimination did, in fact, exist in the San Diego construction industry, and that the City was at least a passive participant in that discrimination.

As the San Diego City Attorney's Memorandum (MS59) of March 28, 2008, concluded, "governmental agencies have an affirmative obligation to remedy the ongoing effects of intentional discrimination within their jurisdictions." With this obligation in mind, the CEOC recommends the City's commission of a current disparity study to ascertain whether non-participation in City contracting by firms owned by women and people of color is, today, a function of industry-wide discrimination and whether the City may be fairly criticized as being a passive participant in any such discrimination. The results of such a study will give the City the information it sorely needs to attempt to determine the reasons for such scant participation in government contracting by such firms and to fashion more effective programs to remedy any discriminatory conduct reported.

Depending on the California Supreme Court's determination of the issues now pending before it in the *Coral Construction, Inc. v. City and County of San Francisco* case, the results of such a disparity study will also reveal whether the City should or must implement race-conscious participation goals in public works contracts.

The Subcontracting Outreach Program (SCOPE)

The City's SCOPE program, applicable to City construction projects in excess of \$100,000 is intended to achieve a diverse cross-section of subcontractors by encouraging prime contractors to conduct race/gender neutral outreach efforts. It sets mandatory subcontractor participation goals, and advisory participation levels for Disadvantaged Business Enterprises ("DBE's") and Disabled Veteran Business Enterprises ("DVBE's").

The SCOPE Program has been in effect since 2001. Whether a function of poor City implementation or faulty design, the program has not produced a diverse cross-section of subcontractor participants. In an effort to improve its effectiveness, the City has recently revised its SCOPE program by adopting the recommendations of consultant Franklin Lee.

The revised SCOPE program has not, yet, been fully implemented. The delay appears to be attributable to staff limitations combined with the City's need to acquire and implement computer software necessary to the outreach efforts contemplated by the revised SCOPE Program. Without the software, prime contractors remain obligated to conduct and report on its outreach efforts as they did before the recent changes.

The bottom line, however, is that since the Mayor's 2007 pledge to implement and maintain the City's programs, the SCOPE Program has not, yet, been effective in increasing DBE and/or DVBE participation in City construction contracts.

The Minor Construction Program ("MCP")

The MCP, enacted in 2002, permits "minor public works", i.e., construction contracts valued at \$250,000 and under, to be bid out to small and emerging businesses who are participants of the program. In 2008, the dollar value of contracts let by the City to MCP participants was quite low. In 2009, twenty-two (22) MCP contracts have been identified.

The CEOC recommends City attention to methods by which a greater dollar volume of City work is completed by MCP participants, such as through the unbundling of larger contracts so that some of their components can be eligible for completion by MCP participants.

The Mentor Protégé Program

Construction: The total number of graduates of this program are five (5). The CEOC will ask City staff to provide a report to it on the number of City contracts for which graduates of the program have submitted bids, the number of City contracts awarded to any of such graduates, the number of such contracts completed and the total dollar value of such contracts. The CEOC will include an assessment of the effectiveness of the program in a future report. The CEOC commends all mentors who have participated in this program.

Consulting: The CEOC is pleased to note the City's participation in the Architectural and Engineering Mentor Protégé Program, and will report on the effectiveness of that program in a future report.

Community Development Block Grant Analysis

The City allocates a portion of Community Development Block Grant (CDBG) funds to various organizations, consistent with the goals of that program to assist low and moderate income persons. The CEOC has asked for, and will receive, a presentation on the City's allocation of CDBG funds at its July, 2009, meeting. The CEOC is interested in assessing the extent to which such grants have been, or might be, effective in increasing diversity in public contracting.

The Contractor/Vendor Registration System

The creation and maintenance of a contractor/vendor computer database by which those who would contract with the City can identify themselves by such registration, and by which they can indicate whether they are certified M/WBE or DVBE firms and additional valuable information about them is an important feature of the outreach efforts designed to achieve a diverse cross-section of building contractors, suppliers and consultants engaged by the City. By design, this database will be made accessible to prime contractors obliged to complete the subcontractor outreach obligations of the SCOPe program, and the computer software associated with the database will enable prime contractors to complete their outreach efforts through the City's program.

As noted above, the City's acquisition and implementation of off-the-shelf computer software needed to make this component of the City's SCOPe Program fully operational, has been delayed. The CEOC understands it should be fully operational by September, 2009, and looks forward to evaluating its effectiveness in the future.

Outreach Activities

To achieve diversity in public contracting which has been lacking historically, the City must continue and improve upon its efforts to advise all contractors, including DBE/SWBE/SMBE and DVBE firms, of the availability, type and dollar amounts of City contracts.

Presently, construction projects which are completed with City funds are subject to the race neutral outreach limitations imposed by Proposition 209, passed by California voters in 1996. However, certain contracts awarded by the City are for the expenditure of federal funds, and those contracts include federally-mandated race and gender conscious participation goals. Therefore, City employees who staff the Equal Opportunity Contracting Department must be trained in the current requirements of contracts awarded pursuant to any such program. The City should also, as a part of its outreach efforts, urge all firms eligible to be certified as DBE/SWBE/SMBE and/or DVBE firms to obtain such certifications in light of the opportunities available to them when contracts subject to federal program requirements are awarded.

Proposed Small or Local Business Preference Program

The City has also recently obtained the recommendation of consultant Franklin Lee that it adopt a local small business preference program, applicable to construction contracts as well as those for goods, services and consulting.

The CEOC has been reviewing this proposed program, and believes that a program which requires the City to contract with local small businesses for a significant part of its needs would be beneficial. Local small business owners are a valuable feature of the local economy. Money spent on such contracts would be used to pay wages to local employees and generate profits for local business owner, which would have the effect of stimulating local business and local tax

revenue. The provision of subcontracting opportunities to small local businesses may also result in the achievement of greater diversity on a race neutral basis.

The CEOC's review of this proposed program is not, yet, complete. It has been asked to, and will later provide more specific feedback regarding the proposed program and its features.

Compliance-Related Activities

For equal opportunity activities to be effective, parties on both sides of any affected contract, i.e., both City staff and contractors, need to devote the resources to compliance with the applicable program requirements. The City has been providing, and continues to provide, opportunities for contractors to be trained on how to comply with equal opportunity programs. The CEOC also recommends that City staff be trained regarding the preparation of certified payroll forms, because many of the construction contracts to be let by the City in the foreseeable future will involve the expenditure of federal stimulus funds, subject to federal participation requirements.

Structure and Staffing

Whether it is a function of the City's Budget Process Re-engineering process begun in 2006 or whether the problem is one which existed before then, the City's renewed commitment to the achievement of equal opportunity in all aspects of public contracting, including consulting, purchasing and construction contracts, is a commitment which must be included in the workings of all affected City departments. It has appeared to the CEOC that the implementation and supervision of the City's equal opportunity programs and policies is fractured among different departments, with uncertain lines of supervision, authority and reporting. This structural deficiency also makes it more difficult for relevant information to be assembled and supplied to the CEOC.

The CEOC recommends that the City re-assess the structure of its affected departments with a specific goal of improving the effectiveness of the City's equal opportunity programs.

As it has also become apparent, especially over the last two or three years, it is critical to the effectiveness of the City's equal opportunity programs for the Equal Opportunity Contracting Department to be fully staffed with competent, dedicated personnel. The City's past neglect of the staffing requirements of its Equal Opportunity Contracting office was inexcusable.


The CEOC is, therefore, pleased that the City has exhibited its renewed attention to these important issues by hiring and maintaining a sufficient number of employees to implement and maintain its equal opportunity contracting programs. The City must remain diligent with respect to the employment of a sufficient number of properly trained personnel in connection with its effort to achieve equal opportunity.


CONCLUSION

The CEOC will continue to monitor and report on the efforts and policies of the City related to equal opportunity in contracting. While the City appears to be moving toward the full implementation of its programs designed to afford equal opportunity, it has not, yet, effectively done so. The challenges are significant and important, and the City should not falter in its resolve to achieve appropriate diversity among those with whom it contracts.

The CEOC will continue to address issues relating to equal opportunity in employment, as well.

Respectfully submitted,


Ms. Rebecca Llewellyn, Chair
Citizens' Equal Opportunity Commission


Dr. Shirley Weber, Vice-Chair
Citizens' Equal Opportunity Commission



THE CITY OF SAN DIEGO

September 8, 2009

Honorable Mayor Jerry Sanders and Members of the San Diego City Council
202 "C" Street
San Diego, CA 92101

Dear Mayor Sanders and Members of the San Diego City Council:

This letter is being sent to you by resolution of the Citizens' Equal Opportunity Commission on September 2, 2009.

PURPOSE:

To address the letter from the San Diego Chapter of the Associated General Contractors of America concerning its lawsuit against Caltrans.

BACKGROUND:

On July 10, 2009, the Citizens' Equal Opportunity Commission (CEOC) received a letter from the San Diego Chapter of the Associated General Contractors of America (SDAGC) concerning the lawsuit it filed challenging the validity of the 2007 Caltrans Disparity Study. The CEOC finds the lawsuit unconscionable. The SDAGC alleges that the new Caltrans race conscious program does not meet the criteria set forth in the *Western States Paving vs. the State of Washington* ruling by the 9th Circuit Court of Appeals in 2006. The SDAGC says it is particularly concerned "If Caltrans does not award a contract to a contractor that was the low bidder on a project because Caltrans does not feel the bidder complied with the new Caltrans Race Conscious program, the bidder may protest and seek legal recourse, causing delays to the project."

DISCUSSION:

As you know, San Diego has a history of legal challenges to programs designed to diversify the contractor base of the City. The Association of General Contractors has been challenging San Diego programs to diversify the supplier base since 1972, when the first affirmative action program was adopted by San Diego. Since the implementation of Proposition 209, which prohibited discrimination against or preferential treatment in contracting based upon race, sex,

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September 8, 2009

Mayor Sanders and Members of the City Council

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color, ethnicity or national origin, San Diego has experienced a precipitous drop in the participation of small, local businesses, as well as minority and woman-owned businesses, in the hundreds of millions of dollars of contracts awarded by the City. In 2007, Jim Ryan, Executive Vice President of the SDAGC, faulted minority contractors for "trying to circumvent Prop 209 and do what they can to create quota systems." Now that the 2007 Disparity Study highlights discrimination which is addressed by the Caltrans programs, as required by federal law, the SDAGC is attempting to have a chilling effect on the implementation of these programs to address the clear disparities. Based upon Mr. Ryan's comments, it is not shocking that the SDAGC is questioning the validity of the 2007 Caltrans Disparity Study.

RECOMMENDATION:

The CEOC wants to ensure that the implementation of the race conscious and race neutral programs of Caltrans are not delayed by the City of San Diego. Clearly, the SDAGC wants to stop implementation of these programs because the net result will be a reduction in the business awarded to many of its members to the exclusion of those groups who are being denied government contracting opportunities. In 2008, 95% of all federal contracts were awarded to white males. According to documents provided by AGC in 2007, Caltrans receives approximately \$3 billion in federal funds per year, which would equate to \$2.795 billion in contracts awarded to white males and \$202.5 million in contracts awarded to DBEs, if the goals of the race conscious program were met. The San Diego-based Center on Policy Initiatives says the "need is clearly demonstrated and growing" for programs like the one implemented by Caltrans. The SDAGC lawsuit is not even supported by its state or national organization, the Associated General Contractors of California and the Associated General Contractors of America, who have not become litigants in the lawsuit. Further, the myriad of legal challenges by the SDAGC has helped to create questions about how welcoming a community San Diego is for diverse businesses, affecting tourism and convention business over many years. The City Council and the Mayor must reaffirm their commitment to diversity in San Diego contracting by moving forward with the Caltrans initiatives, as well as other programs being developed by the City.

Sincerely,



Shirley Weber
Vice Chair



THE CITY OF SAN DIEGO

February 21, 2010

Honorable Council President Ben Hueso
City of San Diego
202 C Street, MS 10A
San Diego CA 92101

President Hueso,

At a recent meeting of the Citizens Equal Opportunity Commission (CEOC), it was discussed that we are often out of sync with the City Council and its schedule to bring forth various policies that effect equal opportunity. We have occasionally, missed opportunities to speak before City Council and its committees because we were unaware of the schedule. It is our understanding that you set the agenda for the council and determine which policies will appear before council and various committees. We are very interested in the discussions regarding Councilmember Marti Emerald's Energy Efficiency Health and Safety Standards and your Local Hiring Ordinance.

Our request on this matter is rather simple. We would appreciate being informed of when matters related to equal opportunity are scheduled to be heard as soon as they are set. We would also appreciate if you would factor into the schedule enough time for the CEOC to appear before committees to have input while deliberations are occurring. We meet the first Wednesday of each month.

The CEOC is committed to making a difference for the citizens of San Diego. Being able to impact decisions while the deliberative process is in place, gives us maximum constructive opportunity to accomplish our goals.

Thank you for your support.

Dr. Shirley N. Weber
Chair, CEOC



Equal Opportunity Contracting Program

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THE CITY OF SAN DIEGO

June 11, 2010

City of San Diego
202 "C" Street, MS 10A
San Diego, CA 92101

Attn: Council President Pro Tem Faulconer and
Members of the Audit Committee

Subject: Subcontractor Outreach Program Performance Audit Report

Dear Council President Pro Tem Faulconer:

After considerable discussion and careful consideration, the Citizens Equal Opportunity Commission voted 4-2 to recommend the City move forward with a Disparity Study as recommended by the City Auditor in the Performance Audit of the Subcontractor Outreach Program. We reviewed and discussed the report at both our regularly scheduled monthly meeting June 2, 2010 and a special meeting held June 8, 2010.

Absent a disparity study, the Commission feels that the participation levels of minority, woman, disadvantaged and disabled veteran owned businesses will continue to be extremely low as shown in the report and would further bring to question the City's commitment of inclusion in its contracting opportunities both at the prime and subcontractor levels.

As a point of reference, the Citizens Equal Opportunity Commission is an eleven member board appointed by the Mayor and confirmed by the Council that is governed by Municipal Code Section 26.16; Amended by Ordinance 19255 on 1/26/04. There currently are nine members and two vacancies.

The Commission's duties are to: monitor and/or evaluate the Equal Opportunity Program of the City; advise on a continuing basis, the Mayor, City Council, Civil Service Commission and other appropriate agencies of City government; submit written quarterly reports for review by Rules Committee and Council; assist in recruitment of competent historically under-represented, women and disabled; and promote the City of San Diego as an Equal Opportunity Employer of individuals and firms desiring to contract with the City.

A handwritten signature in black ink, appearing to read "Stamp Corbin".

Stamp Corbin
Vice-Chair, Citizens Equal Opportunity Commission



CITIZENS' EQUAL OPPORTUNITY COMMISSION
1200 THIRD AVENUE, MS 56P
SAN DIEGO, CA 92101
619-235-5785

July 12, 2010

TO: Council President Ben Hueso and Members of the City Council

FROM: Shirley N. Weber, Chair
Citizens Equal Opportunity Commission

RE: Local Jobs Ordinance

At the monthly meeting, July 7, 2010, the Commission considered the local jobs ordinance coming before the council soon. While we applaud the efforts of the Council to create more opportunities for the residents of San Diego, we had some concern regarding the necessity and effectiveness of such an ordinance. Therefore, we offer the following suggestions and observations:

- Is the Local Jobs Ordinance necessary? On the surface it sounds good; however, when we looked at the data for the city, it appears that the majority of hiring on city projects is local. We strongly suggest that you examine the data before approving an ordinance that is not necessary.
- Like many ordinances in the area of employment and opportunity, this has no consequences for non compliance. Our experience leads us to understand that mere suggestions and recommendations have no impact unless there are financial consequences for non compliance. Failure to comply with this ordinance results in no action against the contractor.
- This is a new program without staffing which means it will place additional burden on an already over burdened staff that has difficulty meeting all the requirements of federal, state and local regulations. Without positive consequences from this new program, it seems unwise to add a program unless staffing is recommended.
- Can this program be properly monitored anyway? Verification of residence is difficult. If records are inaccurate, out dated, etc, what happens? Will this program invite fraud? Once again, there are no consequences for any of this.

The commission is concerned that we are adding programs that may not have positive impacts on hiring and equal opportunity. The fact that the same staff responsible for equal opportunity will be monitoring this program is problematic because of limited staff available for the enormous task of equal opportunity. We strongly recommend that the council respond to the concerns expressed above before approving the local jobs ordinance.



Purchasing Contracting Department
FY10 Purchase Orders
(excluding Agencies)
As self identified

| Vendor Minority Business Type | # of Vendors | # of PO's | % of PO's | Total | % of Total |
|--|--------------|-------------|-----------|-------------------------|------------|
| Non-Certified | 181 | 5836 | 79.50% | \$184,676,296.29 | 78.95% |
| Other Business Enterprise | 448 | 532 | 7.29% | \$30,072,725.52 | 12.86% |
| Small Business Enterprise | 1065 | 443 | 6.03% | \$6,734,858.52 | 2.87% |
| Woman Owned Business Enterprise | 475 | 232 | 3.16% | \$4,748,670.62 | 2.03% |
| Local Business Enterprise | 201 | 70 | 0.96% | \$3,066,485.28 | 1.31% |
| Minority Business Enterprise | 307 | 104 | 1.42% | \$2,819,888.18 | 1.21% |
| Disadvantaged Business Enterprise | 154 | 60 | 0.82% | \$865,454.98 | 0.35% |
| Small Local Business Enterprise | 15 | 41 | 0.56% | \$800,363.65 | 0.29% |
| Small Business Admin Bldg Enterprise | 71 | 4 | 0.06% | \$265,588.75 | 0.12% |
| Disabled Veteran Business Enterprise | 65 | 12 | 0.16% | \$60,257.30 | 0.02% |
| SBC | 1 | 1 | 0.01% | \$28,000.00 | 0.01% |
| Lushkin, Gay, Bisexual, Transsexual Business | 15 | 1 | 0.01% | \$15,000.00 | 0.01% |
| Micro Local Business Enterprise | 46 | 1 | 0.01% | \$2,500.00 | 0.00% |
| Persons With A Disability Or Disabilities | 15 | 4 | 0.06% | \$1,172.51 | 0.00% |
| Sum | 1037 | 7343 | | \$233,921,223.01 | |

\$233,921,223.01

